

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERTO VASQUEZ

Plaintiff,

v.

Case No. _____

ALBERTSON'S MARKET,

Defendant.

NOTICE OF REMOVAL

Defendant United Supermarkets, L.L.C. d/b/a Albertson's Market (hereinafter referred to as "United"), by and through undersigned counsel, and pursuant to 28 U.S.C. §§ 1332(a), 1441(a) and (b), and 1446, and the applicable Local Rules of the United States District Court for the District of New Mexico, hereby removes the above-captioned civil action from the Second Judicial District Court of the State of New Mexico, Bernalillo County, to the United States District Court for the District of New Mexico. In support thereof, United states as follows:

I. PROCEDURAL HISTORY

1. Plaintiff Robert Vasquez ("Vasquez") commenced a civil action against Albertson's Market in the Second Judicial District Court, County of Bernalillo, State of New Mexico, captioned Roberto Vasquez v. Albertsons Market, Cause No. D-202-CV-2021-04094. *See* Complaint, attached hereto as *Exhibit A*.

2. New Albertson's, Inc., an Ohio Corporation was served with the Complaint on July 8, 2021. *See* CT Corporation Service of Process Transmittal, attached as *Exhibit B*. Notice of such service was subsequently provided to United.

3. As noted above, United, doing business as Albertson's Market, operated the store where the alleged incident upon which the Plaintiff's Complaint is based occurred, at the time of the alleged incident. Accordingly, United d/b/a Albertson's Market is the proper party Defendant in this matter.

4. The Notice of Removal has been filed in accordance with 28 U.S.C. §§1441(b) and 1446.

II. TIMELINESS OF REMOVAL

5. This Notice of Removal is filed within 30 days of Defendant's receipt of service upon it.

6. Therefore, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b). Moreover, the matter has been pending for less than one year.

7. Pursuant to 28 U.S.C. § 1446(b)(1), this Notice of Removal is timely.

III. BASIS FOR REMOVAL

8. Removal of this case is proper under 28 U.S.C. §1441 and 28 U.S.C. §1332, because complete diversity of citizenship exists between the Plaintiff and Defendant and based upon assertions in the Complaint and the cost of medical treatment incurred by Plaintiff to date arising from the incident at issue, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00) exclusive of costs and interest.

A. Diversity of Citizenship

The Parties in this Action are Citizens of Different States.

9. For diversity purposes, a person is a "citizen" of the state in which he is domiciled." *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Residence

is prima facie evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).

10. Plaintiff alleges she is a resident of Bernalillo County, New Mexico. (*See Exhibit A* at ¶1). Accordingly, Plaintiff is also a citizen of the State of New Mexico.

11. United Supermarkets, LLC is a limited liability company formed under the laws of Texas, with its headquarters located in Lubbock, Texas. An LLC is deemed to be a citizen of the state where each of its members resides. No member of United is a resident of New Mexico. Accordingly, United can be considered a citizen of Texas. For purposes of removal jurisdiction, United is not a citizen of New Mexico.

12. Based upon the foregoing, for purposes of removal jurisdiction, complete diversity exists between Plaintiff and Defendants.

B. Value of Matter in Controversy

13. Under 28 U.S.C. §1441(a), “the amount in controversy is ordinarily determined by the allegations of the complaint, or, where they are not dispositive, by the allegations in the notice of removal.” *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1290 (10th Cir. 2001). The Tenth Circuit has clarified this standard by stating that the removing Defendant “must affirmatively establish jurisdiction by proving jurisdictional *facts* that made it *possible* that \$75,000 was in play...[i]t is only the jurisdictional facts that must be proven by a preponderance – not the legal conclusion that the statutory threshold amount is in controversy.” *McPhail*, 529 F.3d at 955 (emphasis in original). The Tenth Circuit has noted, however, that a Plaintiff cannot avoid removal merely by not alleging the jurisdictional amount, as such a practice/policy would frustrate the purpose of diversity jurisdiction, “which is, after all, to protect the out- of-state Defendant.” *McPhail*, 529 F.3d at 955.

14. To determine whether the amount in controversy requirement is met, a court may aggregate actual damages, punitive damages, attorney's fees, and statutorily imposed penalties, if any, but not interest or costs. *Trujillo v. Reynolds*, No. CIV 07-1077 JB/RLP, 2008 WL 2323521, *3 (Jan. 17, 2008).

15. A removing Defendant may satisfy its burden by proving jurisdictional facts that make it possible that more than \$75,000 is at issue by "rely[ing] on an estimate of the potential damages from the allegations in the complaint." *Id.* In doing this, the Defendant may specify the numerical value of the damage or may not and just allege that the amount in controversy exceeds \$75,000 by setting out the specific factual allegations supporting that conclusion. *Id.* at 956 (citing *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999); *see also Hanna v. Miller*, 163 F.Supp.2d 1302, 1306 (D.N.M. 2001) (stating that courts may consider the substance and nature of the injuries and damages described in the pleadings and finding significant value in Plaintiff's claims where complaint alleged "severe injuries" and "permanent impairment").

16. The Complaint, pursuant to the New Mexico Rules of Civil Procedure, contains no allegations for damages in a specific monetary amount. The Complaint, however, alleges Plaintiff is entitled to compensatory damages for the following categories: severe physical injuries, permanent bodily impairment and scarring, loss of earning capacity in the future, past and future medical expenses, pain and suffering, mental anguish, loss of enjoyment of life, and "other compensable damages." *See Exhibit A*, ¶ 6 and Prayer for Relief. In addition, Plaintiff asserts entitlement to an aware of punitive damages. *Id.* at ¶ 7.

17. Although United does not admit Plaintiff has been damaged in any amount by any act or omission of it or any of its employees, based on the damage allegations in the

Complaint and the information provided by Plaintiff regarding the medical expenses incurred to date that he alleges arose out of the incident at issue, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, as required for diversity jurisdiction pursuant to 28 U.S.C. §1332.

18. Thus, pursuant to 28 U.S.C. § 1332(a), this Court has jurisdiction over this matter, in that the parties hereto are citizens of different states and the amount in controversy, exclusive of interest and costs, is in excess of \$75,000.

IV. NOTICE OF ADVERSE PARTY AND STATE COURT

19. Defendant United, upon filing this Notice of Removal, is filing a copy of this Notice of Removal with the District Clerk of the Second Judicial District Court in the State of New Mexico, Bernalillo County, in accordance with 28 U.S.C. §1446(d). A copy of the Notice of Filing of Notice of Removal is attached as *Exhibit C*.

20. Pursuant to by 28 U.S.C. Section §1446(d), written notice of removal is being served on counsel of record.

V. FILINGS FROM STATE COURT DOCKET

21. Pursuant to D.N.M. LR-CIV 81.1(a) of the Local Civil Rules of the United States District Court for the District of New Mexico, legible copies of records and proceedings from the state court action are being filed herewith.

United reserves, preserves, and does not waive, any and all defenses it may have to Plaintiff's Complaint, including without limitation, insufficiency of process, insufficiency of service of process, lack of jurisdiction over the person and failure to join necessary and indispensable parties.

WHEREFORE, United d/b/a Albertson's Market respectfully requests that this case be entered upon the docket of the United States District Court for the District of New Mexico, pursuant to 28 U.S.C. §§ 1441 and 1446.

Respectfully Submitted,

BUTT THORNTON & BAEHR PC

/s/ Monica R. Garcia
Monica R. Garcia
P.O. Box 3170
Albuquerque, New Mexico 87190
Telephone: (505) 884-0777
Facsimile: (505) 889-8870
mrgarcia@btblaw.com
Attorneys for Defendant

I HEREBY CERTIFY that on the 9th day of August, 2021, I filed the foregoing electronically through the electronic filing system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Kenneth R. Wagner – kwagner@kenwagnerlaw.com
Attorneys for Plaintiff

/s/ Monica R. Garcia
Monica R. Garcia

The JS-44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1. (a) PLAINTIFFS

ROBERT VASQUEZ

(b) County of Residence of First Listed Plaintiff: BERNALILLO COUNTY

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS UNITED SUPERMARKETS, L.L.C. d/b/a Albertson's Market
County of Residence of First Listed Defendant: LUBBOCK COUNTY, TEXAS
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Kenneth R. Wagner, Esq.
Ken Wagner Law, P.A.
P.O. Box 25167
Albuquerque, NM 87125
Phone: 505-242-6300
kwagner@kenwagnerlaw.com

Butt Thornton & Baehr, P.C.
Monica R. Garcia, Esq.
4101 Indian School Rd. N.E. #300
Albuquerque, NM 87110
Telephone: 505- 884-0777
mrgarcia@btblaw.com

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUITE (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury – Med. Malpractice <input type="checkbox"/> 365 Personal Injury – Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Heath <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 480 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housings Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc. Security Act	<input type="checkbox"/> 861 HIA (1395 ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS – Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify) _____
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity.):
28 U.S.C. §1441 and 28 U.S.C. §1332

Brief description of cause: Damages related to contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in Complaint

JURY DEMAND: YES ☐ NO ☒ X

VIII. RELATED CASE(S) IF ANY (See instructions)

JUDGE _____ DOCKET NUMBER _____

DATE

August 9, 2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Monica R. Garcia

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

**FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
6/30/2021 11:09 AM
CLERK OF THE COURT
Patricia Serna**

**ROBERTO VASQUEZ,
Plaintiff,**

vs.

Cause No.: D-202-CV-2021-04094

**ALBERTSONS MARKET,
Defendant.**

**COMPLAINT
FOR PERSONAL INJURY AND DAMAGES**

COMES NOW the Plaintiff, **ROBERTO VASQUEZ**, by and through his attorney of record, **KEN WAGNER LAW, P.A. (Kenneth R. Wagner, Esq.)**, and for his cause of action against Defendant, states as follows:

FIRST CAUSE OF ACTION

1. Plaintiff is a resident of Bernalillo County, Albuquerque, New Mexico. Defendant, Albertsons Market is a corporation, and may be served with process by serving its registered agent for service, Corporation Process Company, at its registered office, at 726 E. Michigan, Ste 330, Hobbs, New Mexico 88240.

2. Defendant owns and operates a grocery store and related properties at 10131 Coors Road, NW, Albuquerque, New Mexico 87114, where the subject accident occurred on February 14, 2019.

3. Plaintiff, Roberto Vasquez, brings this suit to recover for personal injuries sustained as a result of a dangerous condition on Defendant's property, specifically a fall he sustained when entering the Albertsons Market on or about February 14, 2019.

4. At the time and on the occasion in question, Plaintiff was an invitee on Defendant's property, having gone there for grocery shopping. Defendant knew of the unreasonably dangerous condition and neither corrected nor warned the Plaintiff of it. TO WIT: water on the floor of the entrance caused by a leaking roof wherein Albertsons Market had construction crews tending to the leaks and failed to place caution barriers or direct customers to another entrance.

5. The Plaintiff did not have any knowledge of the dangerous condition and could not have reasonably been expected to discover it. Defendant's failure to correct the condition or to warn Plaintiff constituted negligence, and such negligence was the proximate cause of the occurrence in question and the Plaintiff's resulting injuries.

6. As a result of the occurrence above described, the Plaintiff suffered severe personal injuries, causing Plaintiff to sustain permanent bodily impairment, scarring, and a loss of earning capacity in the future. Plaintiff underwent physical therapy. Plaintiff has experienced physical pain and mental anguish and will, in reasonable probability, continue to do so in the future by reason of the nature and severity of Plaintiff's injuries and disfigurement. Plaintiff has been caused to incur medical charges and expenses in the past and will continue to incur medical expenses in the future for Plaintiff's injuries in a sum to be established at trial.

7. Defendant's conduct as above described was willful, wanton, and reckless and Plaintiff is entitled to punitive damages in a sum to be established at trial.

WHEREFORE, Plaintiff, Roberto Vasquez, prays for judgment against the Defendant as follows:

- A. Compensatory damages to compensate Plaintiff for his pain, suffering and disfigurement; loss of enjoyment of life; loss of chance; loss of income; loss of ability to earn income; and other compensable damages;
- B. Punitive damages;
- C. Prejudgment and post judgment interest;
- D. Costs incurred in the prosecution of this case; and
- E. For such other and further relief as the Court deems just and proper.

Respectfully submitted this 30th day of June 2021.

KEN WAGNER LAW, P.A.

Electronically Filed

/s/Kenneth R. Wagner

Kenneth R. Wagner, Esq.

Attorney for Plaintiff

P.O. Box 25167

Albuquerque, NM 87125

Telephone: (505) 242-6300

Fax: (505) 242-0790

kwagner@kenwagnerlaw.com



**Service of Process
Transmittal**

07/08/2021

CT Log Number 539868733

TO: Donna Shavers
Albertson's LLC
PO BOX 160066, 321 MONTGOMERY RD
ALTAMONTE SPRINGS, FL 32716-0066

RE: Process Served in New Mexico

FOR: Albertsons (Cross Ref Name) (Domestic State: OH)
New Albertsons, Inc. (True Name)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: ROBERTO VASQUEZ, PLTF. vs. ALBERTSONS MARKET, DFT.
Name discrepancy noted.

DOCUMENT(S) SERVED: --

COURT/AGENCY: None Specified
Case # D202CV202104094

NATURE OF ACTION: Personal Injury - Failure to Maintain Premises in a Safe Condition

ON WHOM PROCESS WAS SERVED: The Corporation Process Company, Hobbs, NM

DATE AND HOUR OF SERVICE: By Process Server on 07/08/2021 at 14:30

JURISDICTION SERVED : New Mexico

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 07/08/2021, Expected Purge Date: 07/13/2021

Image SOP

Email Notification, Michael McCue Michael.McCue@safeway.com

Email Notification, Donna Shavers donna.shavers@albertsons.com

Email Notification, Risk Management Group RM.Claim.Support@Safeway.com

Email Notification, Carmen Rowland Carmen.Rowland@safeway.com

REGISTERED AGENT ADDRESS: The Corporation Process Company
726 E. Michigan
Suite 330
Hobbs, NM 88240

866-203-1500
DealTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other



**Service of Process
Transmittal**

07/08/2021

CT Log Number 539868733

TO: Donna Shavers
Albertson's LLC
PO BOX 160066, 321 MONTGOMERY RD
ALTAMONTE SPRINGS, FL 32716-0066

RE: Process Served in New Mexico

FOR: Albertsons (Cross Ref Name) (Domestic State: OH)
New Albertsons, Inc. (True Name)

advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

ROBERTO VASQUEZ

Plaintiff,

v.

Case No. D-202-CV-2021-04094

ALBERTSON'S MARKET,

Defendant.

NOTICE OF FILING OF NOTICE OF REMOVAL

Defendant United Supermarkets, LLC d/b/a Albertson's Market hereby notifies the Court that on August 9, 2021, it filed a Notice of Removal of the above captioned matter in the United States District Court for the District of New Mexico. A copy of the Notice of Removal is attached as *Exhibit A*. Accordingly, and pursuant to 28 U.S.C. § 1446(d), this Court may proceed no further unless and until the case is remanded.

Respectfully Submitted,

BUTT THORNTON & BAEHR PC

/s/ Monica R. Garcia

Monica R. Garcia

P.O. Box 3170

Albuquerque, New Mexico 87190

Telephone: (505) 884-0777

Facsimile: (505) 889-8870

mrgarcia@btblaw.com

Attorneys for Defendant

I HEREBY CERTIFY that on the 9th day of August, 2021, I filed the foregoing electronically through the electronic filing system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Kenneth R. Wagner – kwagner@kenwagnerlaw.com
Attorneys for Plaintiff

/s/ Monica R. Garcia
Monica R. Garcia

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
7/12/2021 10:51 AM
CLERK OF THE COURT
Edna Kasuse

SUMMONS

Second Judicial District Court Bernalillo County, New Mexico 400 Lomas Blvd. N.W. Albuquerque, NM 87102	Case Number: D-202-CV-2021-04094
Court Telephone Number: (505) 841-7451	Judge: Daniel Ramezyk
Plaintiff(s): ROBERTO VASQUEZ vs. Defendant(s): ALBERTSONS MARKET	Defendant Name: ALBERTSONS MARKET Address: Corporation Process Company 725 E. Michigan, Ste 330 Hobbs, NM 88240

TO THE ABOVE-NAMED DEFENDANT(S): Take notice that:

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6227; or 1-505-797-6066.

Dated at _____, New Mexico, this 7/7/2021 day of July 2021.

KATINA WATSON



SECOND JUDICIAL DISTRICT COURT
CLERK OF THE COURT

Katrina Watson
Deputy Clerk

Kenneth R. Wagner, Esq.
KEN WAGNER LAW, P.A.
P.O. Box 25167
Albuquerque, NM 87125
Phone: (505) 242-6300
Fax: (505) 242-0790
Email: kwagner@kenwagnerlaw.com

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 NMRA OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

RETURN OF SERVICE

STATE OF NEW MEXICO)

)ss

COUNTY OF BERNALILLO)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in Lea county on the 8 day of July, 2021, by delivering a copy of this summons, with a copy of complaint attached, in the following manner: *(check one box and fill in appropriate blanks)*

☐ to the defendant *(used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)*

☐ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA *(used when service is by mail or commercial courier service)*.

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, *(used when the defendant is not presently at place of abode)* and by mailing by first class mail to the defendant at _____ *(insert defendant's last known mailing address)* a copy of the summons and complaint.

☐ to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ *(insert defendant's business address)* and by mailing the summons and complaint by first class mail to the defendant at _____ *(insert defendant's last known mailing address)*.

☒ to Kimberlie Flauto, an agent authorized to receive service of process for defendant Albertsons Market.

☐ to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ *(used when defendant is a minor or an incompetent person)*.


☐ to _____ *(name of person)*, _____ *(title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision)*.

Fees: _____

[Signature]
Signature of person making service

PI Johnny Rivas
Title (if any)

Subscribed and sworn to before me this 9th day of July 2021.

 OFFICIAL SEAL
VALERIE GUERRA
NOTARY PUBLIC, STATE OF NEW MEXICO
MY COMMISSION EXPIRES 7-24-2024

[Signature]
Official title Notary

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
6/30/2021 11:09 AM
CLERK OF THE COURT
Patricia Serna

ROBERTO VASQUEZ,
Plaintiff,

v.

Cause No. D-202-CV-2021-04094

ALBERTSONS MARKET,
Defendant.

**PLAINTIFFS' CERTIFICATION
REGARDING ARBITRATION UNDER LOCAL RULE 2-603**

I, Kenneth R. Wagner, Esq., counsel for the Plaintiff, certifies that:

_____ This case is subject to referral to arbitration under Local Rule 603. No party seeks relief other than a money judgment and no party seeks an award in excess of \$25,000.00 inclusive of punitive damages and exclusive of interest, costs and attorneys' fees.

X This case is not subject to referral to arbitration under Local Rule because at least one party seeks relief other than a money judgment and/or at least one party seeks an award in excess of \$25,000.00 exclusive of punitive damages and exclusive of interest, costs and attorneys' fees.

We further certify that the pleadings in this case are closed within the meaning of Guideline 1-5 of the Guidelines to Local Rule 58.

Dated this 30th day of June 2021.

Respectfully submitted,

KEN WAGNER LAW, P.A.

Electronically Filed

By: /s/ Kenneth R. Wagner

Kenneth R. Wagner, Esq.

P.O. Box 25167

Albuquerque, NM 87125

(505) 242-6300

(505) 242-0790 (Facsimile)

kwagner@kenwagnerlaw.com

Attorney for Plaintiff Hope Gallegos